

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:23-CR-32

vs.

Hon. ROBERT J. JONKER
U.S. District Judge

AUSTIN THOMAS NOEL,

Defendant.

_____ /

GOVERNMENT'S SENTENCING MEMORANUM

On March 24, 2023, defendant, Austin Thomas Noel, pleaded guilty to the Felony Information. The Probation Office prepared a Presentence Investigation Report for Noel. The Presentence Investigator calculated the guidelines and determined that the total offense level was 40 and criminal history category I. The sentence recommended by the guidelines is 292 to 360 months. There are no objections for the Court to consider. However, it is the government's understanding that Noel will be asking this Court to consider a sentence below the advisory guideline range. The government opposes the defense motion to reduce Noel's sentence.

Noel's Snapchat conversation history disclosed that Noel had contact with more than 700 Snapchat accounts. (R.33, Presentence Report, ¶ 42, PageID.121.)

Not all of the account holders have been identified. (*Id.*) However, the content of the chats indicated that 37 appeared to be minors. (*Id.*) Of those, approximately 24 of those accounts appeared to be held by girls ranging from 12 to 15 years old. (*Id.*) That age range includes children as young as sixth grade. All of the chats are immediately sexual and sexually aggressive. Victim 1 recalled that she was in the sixth grade when Noel initiated his sexual chats with her. (*Id.* ¶ 17, PageID.115.)

Full forensic examination of Noel's cell phone was limited by encryption. Noel had on his cell phone applications called "Lockdown Pro" and "Keepsafe." (*Id.* ¶ 36, PageID.120.) The government was not able to recover the entire contents of Noel's cell phone. The contents hidden behind Lockdown Pro and Keepsafe were not accessible. The few images that were recovered, were recovered in temporary space. The chats between Victim 1 and Noel clearly indicate that many more images were created by Victim 1 and sent to Noel. Victim 1 disclosed in her interview that she sent numerous images to Noel at his urging. (*Id.* ¶¶ 38-39, PageID.120.) The government believes that it recovered only a small fraction of images that Noel produced and collected.

In addition, the government was advised that Noel was investigated for the rape of an adult. (*See* Restricted Access Attachment 1.) The allegation was that the victim, a 23-year-old woman, met Noel through Tinder, a dating application. They agreed to get together on January 24, 2020. The victim told Noel that she did not want to have sex. Nonetheless, they had a sexual encounter that she described as

aggressive. He forced her to perform an oral sex act and sexually assaulted her anally while choking her. The victim acknowledged that she did not tell him to stop and that she just froze, like her mind had turned off. Three days later, she reported the incident to the police.

As noted in the presentence report, close in time to that incident, between December 28, 2019, and January 15, 2020, Noel was having a sexual conversation with MV3, a 17-year-old minor. (R.33, PSR, ¶ 47-48.)

Noel is a 27-year-old adult. At the time he was chatting with and coercing MV1 to produce pornographic images of herself, he was 24 years old. MV1 was 13 years old. And he knew how old she was. At one point, he tells her, “When you’re 15 you can emancipate yourself and I can adopt you.” (Id. ¶ 31, PageID.119.)

Noel used the Internet to cast a wide net looking for girls and young women for sex. Noel’s sexual appetite extended to included six-grade girls. He exploited, manipulated, and used a thirteen-year-old girl. He made numerous attempts to contact young girls and attempted to meet with them. The sexual assault described by the 23-year-old woman is an indication of how a meeting with Noel would have gone. Noel’s request for a sentence below the advisory guideline range is not supported by his history and characteristics or by the nature and circumstances of the offense of conviction.

WHEREFORE, the United States opposes the defense motion for a downward variance.

Respectfully submitted,

MARK A. TOTTEN
United States Attorney

Dated: August 31, 2023

/s/ Daniel Y. Mekaru
DANIEL Y. MEKARU
Assistant United States Attorney
PO Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404